

EXHIBIT E-4

INSURANCE REQUIRED BY RAILROAD OF CONTRACTORS AND SUB-CONTRACTORS

Contractor shall at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability Insurance This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

Bodily injury including death and personal injury

Property damage

Fire legal liability (Not less than the replacement value of the portion of the premises occupied)

Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

"For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Worker's Compensation, disability benefits, or unemployment compensation law or similar law."

The exclusion for railroad (except where the Job site is more than fifty (50') feet from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

Coverage for Contractor's (and Railroad's) employees shall not be excluded

Waiver of subrogation

B. Business Automobile Coverage Insurance This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

Bodily injury and property damage

Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

"For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Worker's Compensation, disability benefits, or unemployment compensation law or similar law."

The exclusions for railroads (except where the Job site is more than fifty (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability Insurance including but not limited to:

Contractor's statutory liability under the worker's compensation laws of the state(s) affected by this Agreement

Employers' Liability (Part B) with limits of at least

\$500,000 each accident, \$500,000 disease policy limit
\$500,000 each employee

If Workers Compensation insurance will not cover the liability of the Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall contain the following endorsement which shall be indicated on the certificate of insurance:

Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. Railroad Protective Liability Insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

F. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.

G. Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.

H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.

I. Prior to commencing the Work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

J. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Bests Insurance Guide Rating of A- and Class VII or better and authorized to business in the state(s) in which this service is to be provided.

K. Contractor WARRANTS that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.

L. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

EXHIBIT E-5
FORM OF TEMPORARY CONSTRUCTION EASEMENT

GRANT OF EASEMENT FOR CONSTRUCTION OF, ACCESS TO, AND ACTIVITIES
RELATED TO THE RECONSTRUCTION, REPAIR AND MAINTENANCE OF PATHWAY
STRUCTURES

This is a Grant of Easement for Construction of, Access to and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures, (this "Agreement"), by and among the City of Wheaton, Illinois (the "City"), the Board of Education of Community Unit School District 200 (the "School District"), and the Wheaton Park District (the "Park District"). City, School District and Park District are hereinafter sometimes individually referred to as a "Party" and collectively as the "Parties." This Agreement is dated as of _____, 200__.

RECITALS

1. School District and Park District intend to construct a pathway, south of the right-of-way of the Union Pacific Railroad (the "Railroad"), gradually ascending above ground level to a pedestrian/hiker/bicycle bridge structure over said right-of-way (the "Pathway"). School District and Park District will be engaging in activities related to the construction, reconstruction, repair and maintenance of the Pathway and structures appurtenant or incidental thereto, on the City Land, as hereinafter defined, and the transportation or storage of construction materials and tools (collectively, the "Permitted Pathway Construction Activities").

2. City is the owner of certain real property legally described and depicted on **Exhibit A** attached hereto (the "City Land"), near which the Pathway, as previously defined, will be constructed by School District and Park District. City is willing to grant to School District and Park District an easement (the "Easement") for the Permitted Pathway Construction Activities on a portion of the City Land.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Subject to the limitations herein contained, City hereby grants to the School District and Park District, their successors and assigns (the "School and Park District Grantees") the Easement on portions of the City Land, for the Permitted Pathway Construction Activities, said portions being marked as the construction easement on **Exhibit A** attached hereto. The area marked as the construction easement on **Exhibit A** hereto is hereinafter referred to as the "Construction Zone."

2. **Term of Easement.** The Easement shall commence on the date of execution of this Agreement by all Parties, and shall continue as long as the Pathway, together with the access ramps, paths and stairs appurtenant to the Pathway (collectively, the "Project"), are in existence and either School District or Park District, or their successors or assigns, remains obligated to reconstruct, repair or maintain the Project, whether pursuant to contract or otherwise. The obligations of School District and Park District, as grantees hereunder, shall survive the expiration or termination of the Easement and under no circumstances shall any such obligation be deemed discharged until fully performed in accordance with provisions of this Agreement.

3. **Abandonment of Easement.** On notice by Park District and School District to City, School District and Park District may abandon the Easement, in which case, Park District and School District, at their sole cost and expense, shall restore the City Land, to the condition of said City Land as existed prior to the commencement of the Permitted Pathway Construction Activities, and thereupon the Easement shall

terminate, and the Park District and School District shall have no further obligations with respect thereto under this Agreement, except as otherwise specifically stated in this Agreement.

4. Use of Easement. The Easement shall be used and enjoyed solely by the School and Park District Grantees, for the Permitted Pathway Construction Activities and for no other purpose.

5. Equipment; Machinery; Explosives; Debris. No equipment or machinery shall be brought or permitted to come onto the City Land, except in the Construction Zone, and subject to such reasonable restrictions as shall be specified by City, as grantor. No equipment, machinery, tools or materials shall be stored or be permitted to remain overnight on the City Land, and no explosives or flammable or hazardous substances of any kind shall be transported across, brought upon, or stored or deposited on the City Land, except, in both instances, with the express written consent of the City, with such reasonable conditions as may imposed by City. The Construction Zone at all times shall be kept free of accumulations of debris, waste and garbage.

6. City's Rights Regarding Health and Safety. City as shall have the right at any time during construction, reconstruction, repair and maintenance of the Project , to:

- a. impose weight and load restrictions which City reasonably determines are necessary or advisable under the circumstances;
- b. temporarily suspend the Easement on five (5) days written notice (except in the case of life threatening emergency, when no notice shall be required), for safety or health reasons or for the breach by any of the School and Park District Grantees of their obligations under this Agreement, pending the elimination of said emergency or commencement of cure of said breach.

7. No Effect on City's Rights. If City, as grantor, shall reserve any rights under this Agreement or fail to exercise same, said reservation or failure shall not impose or create any responsibility or liability on such City or affect, reduce or nullify in any way the obligations of the School and Park District Grantees under this Agreement.

8. Joint Use. City, as grantor shall have the right to use the City Land, including the Construction Zone, at any time for any purpose which does not unreasonably interfere with the Easement, including permitting the construction, maintenance and operation on, over or under the City Land of any public utility facility. City, as grantor, shall have the right to enter upon the Construction Zone, at any time(s), to reasonably inspect, maintain or repair the City Land including the Constructions Zone and improvements thereon, to determine compliance by School and Park District Grantees, with the terms and conditions of this Agreement, as applicable, and for any other lawful purposes, provided such inspections, maintenance and repair shall not unreasonably interfere with the Permitted Pathway Construction Activities.

9. Continuing Use of Land. The School and Park District Grantees understand and acknowledge that the City Land will continue to be actively used by City personnel and the public during the construction, placement, and later reconstruction, repair and maintenance of the Project . The School and Park District Grantees shall conduct, and shall require their employees, agents and contractors to conduct, the Permitted Pathway Construction Activities at all times in a workmanlike manner.

10. Compliance With Laws. The School and Park District Grantees shall comply with all applicable federal, state and local laws, rules and regulations in the conduct of the Permitted Pathway Construction Activities.

11. Restoration; Fencing. Upon completion of any of the Permitted Pathway Construction Activities, the School and Park District grantees shall restore the Construction Zone or any other affected portions of the City Land, to the condition existing immediately prior to the commencement of any activity thereon by said grantee(s). Additionally, said grantees, at each of their sole cost and expense, shall repair all damage to the Construction Zone, any improvements located thereon and any other affected portion(s) of the City Land, and replace all lost or destroyed items. By way of example and not limitation, the existing fence on the City Land shall be removed during initial construction of the Project, and may be removed in part for subsequent maintenance and repair work on the Project, and such fence shall be relocated, at the expense of the School and Park District Grantees, as the Parties shall reasonably agree. Any damage to sidewalks, paths or parking lots on the City Land will be repaired or replaced as reasonably deemed necessary by the City. All restoration, repair and replacement shall be completed to the reasonable satisfaction of the City within thirty (30) days after the conclusion of the work, or, if due to weather or other circumstances which, in the City's opinion, would make any such restoration, repair and replacement inadvisable, then within such later time period as the City shall reasonably request.

12. Recitals Incorporated. The recitals listed at the beginning of this Agreement, above, are hereby incorporated in their entireties by reference in this Agreement.

13. Grantees' Duty of Notice and Cooperation. The School and Park District Grantees hereunder, shall give prior notice to City of the commencement, anticipated duration and termination of construction, placement, reconstruction, repair and maintenance activities, as applicable, and shall conduct said activities so as to not unreasonably interfere with City's activities on the City Land.

14. Right to Cure. In the event the School and Park District Grantees shall fail to perform any of their agreements or covenants hereunder, then City may give written notice of such deficiency to the applicable grantee, and if the applicable grantee does not cure such deficiency, or commence such cure and be diligently pursuing it to completion (if the nature of such deficiency is that it cannot be immediately cured), within forty-five (45) days after the giving of such notice, the City may either bring an action for specific performance thereof or take such action as the City deems reasonably necessary to perform said obligations, and the applicable grantee shall pay the City's costs therefor, immediately upon City's demand. The City's right to bring an action for specific performance of the applicable grantee's aforementioned obligations, or to perform said obligations and demand payment therefor, shall be the City's sole remedies for said deficiencies by the applicable grantee. In the event any Party brings any such action for specific performance or for the recovery of payments required to be made under this Paragraph 14, the non-prevailing Party in said action shall be responsible for the prevailing Party's reasonable attorneys' fees paid or incurred with respect to such action.

15. Indemnification.

15.1 Subject to the limitations contained in this Paragraph 15.1, the School District and the Park District hereby indemnify and hold harmless City, its council members, officers, agents, employees, officials, successors and assigns (the "City Indemnitees") and shall defend the City Indemnitees, from and against all liabilities, claims, demands, causes of actions, costs and expenses (including, without limitation, reasonable attorneys' fees and paralegals' fees and costs and court costs, collectively, hereinafter, the "Legal Expenses") arising out of or related to any injury to or the death of any person or loss of or damage to property (the "Injuries") occurring in or about the City Land to the extent caused by any negligent act or omission of any of the School and Park District Grantees. In furtherance of the foregoing indemnification obligation of School District and Park District, School District's and Park District's contractors, subcontractors or material suppliers shall separately indemnify the City Indemnitees in their contracts with School District and Park District or other third parties. School District and Park District shall each be responsible only for Injuries caused by its own respective uses. School District and Park District shall not be obligated or responsible to indemnify, hold harmless and defend the City Indemnitees, or any third parties, from or against any liability, claim, demand, cause

of action, costs or expenses (including, without limitation, Legal Expenses) arising out of or related to any Injuries, to the extent same result from or arise out of the negligent or wrongful acts or omissions of any of the City Indemnitees. Nothing in this paragraph shall be interpreted to waive any statutory or common law grants of privilege or immunity.

15.2 School District and Park District hereby indemnify and hold the City Indemnitees harmless from and against any and all mechanics' and materialmen's liens, or claims therefor, including Legal Expenses for defense thereof, arising out of or in connection with the Permitted Pathway Construction Activities on the City Land.

16. Insurance. Park District and School District shall maintain commercial general liability insurance which includes coverage for liability assumed under an insured contract (including the tort liability of another assumed in a contract) covering occurrences on the City Land and shall name City, its council members, agents, employees and officials, as additional insureds under such policies. Park District and School District shall also require all of their contractors and subcontractors performing any work for Park District or School District on the City Land to maintain commercial general liability and property damage insurance, which insurance shall name City, its council members, commissioners, agents, employees and officials, as additional insureds thereon. All such policies of insurance shall be in the amount and form described in Exhibits B, C and D attached hereto, and evidence of insurance shall be provided as described in said Exhibits. Because the Easement is contemplated to be a perpetual easement, City may require School District and Park District, at any time after the initial construction of the Pathway, while Easement is in effect, to provide other or additional insurance coverage as may be reasonable under all of the facts and circumstances at the relevant time, and City may, in its sole and absolute discretion, reduce or waive any of the insurance requirements contained in Exhibits B, C and D attached hereto.

17. Notices. The Parties may give notice to each other at, and any notice required by the provisions of this Agreement shall be in writing and shall be mailed, United States mail, first class, postage prepaid, to the following addresses; or delivered in person to the following locations, with proof of such delivery to be evidenced by a receipt signed by the receiving Party; or transmitted by fax transmission, with hard copy and machine generated proof of transmission being mailed, the date of transmission, United States mail, first class, postage prepaid, to the receiving Party, at the following addresses:

If to School District:
Community Unit School District 200
130 West Park Ave.
Wheaton, IL 60187

If to Park District:
Wheaton Park District
666 S. Main St.
Wheaton, IL 60187
Attention: Executive Director

If to City:
City of Wheaton
303 West Wesley Street
Wheaton, IL 60187
Attention: City Manager

Notice sent by mail shall be deemed given the third business day after deposit in the United States mail, first class, postage prepaid. Notices delivered in person shall be deemed given the date of delivery, as

evidenced by a signed receipt of the Party receiving delivery, provided such delivery is made between 9:00 AM and 5:00 PM on a regular business day, and if delivery is made after such hours, notice shall be deemed given the next regular business day. Notices transmitted by fax shall be deemed given the date of transmission if transmitted between 9:00 AM and 5:00 PM on a regular business day, or, if after said time, on the next regular business day.

18. Entire Agreement. This Agreement contains the entire contract among the Parties with respect to the use of , the City Land for the Permitted Pathway Construction Activities , and cannot be modified, except by a writing, dated subsequent to the date hereof, and signed by all Parties.

19. Binding Effect. This Agreement shall bind the successors and assigns of the Parties and shall run with the City Land.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed, by a duly authorized officer thereof, as of the date and year first above written.

City of Wheaton

By: _____

Printed Name: _____

As its: _____

Attest: _____

Board of Education of Community Unit School District 200

By: _____

Printed Name: Andrew Johnson

As its: President

Attest: _____

Wheaton Park District

By: _____

Printed Name: Jeffrey R. Cook

As its: President

Attest: _____

STATE OF ILLINOIS)
)
COUNTY OF _____) ss

I, _____, a Notary Public in and for said county and state, hereby acknowledge that on this _____ day of _____, 20_____, personally appeared before me _____, as _____ of the Wheaton Park District, and _____, as _____ of the Wheaton Park District, known to me to be the persons who executed the foregoing Grant of Easement for Construction of, Access to, and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures, and acknowledged that they executed said instrument as their free and voluntary act and as the free and voluntary act of the Wheaton Park District, for the uses and purposes therein set forth.

Notary Public

(SEAL)

My commission expires: _____

EXHIBIT A TO EXHIBIT E-5. GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

**LEGAL DESCRIPTION AND DEPICTION OF CITY LAND
WITH CONSTRUCTION EASEMENT MARKED**

THAT PART OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SECTION 18; THENCE NORTHERLY ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 18, A DISTANCE OF 4.95 CHAINS (RECORDED) TO THE CENTERLINE OF MANCHESTER ROAD AS NOW PLATTED AND RECORDED; THENCE SOUTHWESTERLY ALONG THE CENTERLINE OF MANCHESTER ROAD AS NOW PLATTED AND RECORDED, A DISTANCE OF 6.20 CHAINS (RECORDED) TO THE EAST LINE OF THE DUPAGE COUNTY FARM FOR A PLACE OF BEGINNING; THENCE NORTH 0 DEGREES 00 MINUTES EAST ALONG THE EAST LINE OF DUPAGE COUNTY FARM, A DISTANCE OF 1000.0 FEET; THENCE NORTH 90 DEGREES 00 MINUTES WEST, A DISTANCE OF 144.0 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES EAST, A DISTANCE OF 120.0 FEET; THENCE SOUTH 21 DEGREES 48 MINUTES 05 SECONDS WEST, A DISTANCE OF 96.93 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES EAST, A DISTANCE OF 150.0 FEET; THENCE NORTH 90 DEGREES 00 MINUTES EAST, A DISTANCE OF 140.0 FEET TO A POINT 40.0 FEET WEST OF THE EAST LINE OF DUPAGE COUNTY FARM PROPERTY; THENCE SOUTH 0 DEGREES 00 MINUTES EAST ALONG A LINE 40.0 FEET WEST OF THE PARALLEL WITH SAID EAST LINE OF THE DUPAGE COUNTY FARM PROPERTY, A DISTANCE OF 650.13 FEET TO THE CENTERLINE OF MANCHESTER ROAD, AS NOW PLATTED AND RECORDED; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF MANCHESTER ROAD AS NOW PLATTED AND RECORDED, A DISTANCE OF 41.26 FEET TO THE PLACE OF BEGINNING; ALL IN DUPAGE COUNTY, ILLINOIS.

Permanent Index Number: Part of 05-18-211-003-0000

Common Address: Part of the DuPage County Government Complex, North of Manchester Road in Wheaton, Illinois 60187

EXHIBIT B TO EXHIBIT E-5, GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

INSURANCE TO BE MAINTAINED BY INSURED PARTIES

As used in this Exhibit, "Insured Party" or "Insured Parties" means School District or Park District, and "Additional Insured" means the City, and "Agreement" means the Grant of Easement for Construction of, Access to, and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures

The Insured Parties shall obtain and maintain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence and a general aggregate limit of at least \$4,000,000. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operation, independent contractors, products-completed operation, personal injury, including death, property damage, and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a contract), and liability arising from the indemnity provisions contained in this Agreement. The CGL insurance shall also provide for Broad Form Contractual Liability, Underground Hazard and Broad Form Property Damage.

The Additional Insured shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured.

B. Business Auto and Umbrella Liability Insurance

Business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Workers compensation and employers liability insurance as required by statute, and the commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Additional Insured has not been included as and insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Agreement the Insured Party who was to include the Additional Insured waives all rights against the Additional Insured and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to this Agreement.

D. General Insurance Provisions

1. Evidence of Insurance

Upon execution of the Agreement, each Insured Party shall furnish the Additional Insured with (a) certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Additional Insured prior to the cancellation of material change of any insurance referred to therein. Written notice to the Additional Insured shall be by certified mail, return receipt requested.

Failure of the Additional Insured to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Additional Insured to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Insured Party's obligation to maintain such insurance.

Failure to maintain the required insurance may result in termination of the Agreement at the Additional Insured's option.

The Insured Party shall provide certified copies of all insurance policies required above within 10 days of the Additional Insured's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Additional Insured has the right to reject insurance written by an insurer it deems unacceptable. Said insurance companies must be qualified to do business in Illinois. Notwithstanding the foregoing, the insurance provided by the Insured Parties may be through a pooled risk management agency, provided same is reasonably accepted to the Additional Insured.

3. Cross-Liability Coverage

If an Insured Party's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Additional Insured. At the option of the Additional Insured, the Insured Party may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other

related costs including but not limited to investigations, claim administration and defense expenses.

EXHIBIT C TO EXHIBIT E-5. GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

**INSURANCE TO BE MAINTAINED BY CONTRACTORS DURING
CONSTRUCTION OR MAJOR RECONSTRUCTION OF PATHWAY**

As used in this Exhibit, "Contractor" or "Contractors" mean a contractor contractors retained by School District or Park District, to perform work relating to the construction, placement or major reconstruction of the Pathway, and "Construction Agreement" means the applicable construction contract between the School District or Park District and said Contractor or Contractors, for said work. The substantive provisions of this Exhibit shall be incorporated into any Construction Agreement. "Additional Insured" means the City. "Parties" means City, School District and/or Park District.

Contractors shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, and a general aggregate limit of at least \$4,000,000. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of any Construction Agreement. The CGL insurance shall also provide for Broad Form Property Damage, Underground Hazard, and Broad Form Property Damage.

The Additional Insured shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if required by the Additional Insured, commercial umbrella liability insurance with a limit of not less than \$5,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Contractors shall maintain business auto liability and commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent it may be excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractors shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Additional Insured has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against the Additional Insured, its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, a Contractor shall furnish the Additional Insured with (a) certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Additional Insured prior to the cancellation of material change of any insurance referred to therein. Written notice to the Additional Insured shall be by certified mail, return receipt requested.

Failure of the Additional Insured to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Additional Insured to identify a deficiency from evidence that is provided shall not be construed as a waiver of a Contractor's obligation to maintain such insurance.

The Additional Insured shall have the right, but not the obligation, of prohibiting a Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Additional Insured.

Failure to maintain the required insurance may result in termination of the Construction Agreement.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the Additional Insured whenever requested.

Contractors shall provided certified copies of all insurance policies required above within 10 days of written request by the Additional Insured for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Additional Insured shall have the right to reject insurance written by an insurer it deems unacceptable. Such insurance companies must be qualified to do business in Illinois.

3. Cross-Liability Coverage

If a Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Additional Insured. At the option of the Parties or the Railroad, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by a Contractor to purchase and maintain insurance of the type specified above. When requested by the Additional Insured, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

6. Occurrence and Claims Made Policies

All insurance required herein shall be on an "occurrence" basis. If, after every diligent effort to procure such insurance has been made, and such insurance cannot be obtained, Contractor may provide insurance on a "claims made" basis, but such coverage must provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance required hereunder be cancelled.

7. Insurance Required by Railroad

If Railroad requires higher amounts or different types of insurance, with respect to work done on or near Railroad property, the Contractor shall purchase such insurance, and name Railroad as an insured or additional insured thereunder, as Railroad may require.

F. Indemnification

To the fullest extent permitted by law, Contractors shall indemnify and hold harmless the Parties, including the Additional Insured, their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease

or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. The Contractor shall similarly protect, indemnify and hold and save harmless the Parties, including the Additional Insured, their officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Construction Agreement.

EXHIBIT D TO EXHIBIT E-5. GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

**INSURANCE TO BE MAINTAINED BY CONTRACTORS DURING
ROUTINE REPAIR OR MAINTENANCE OF PATHWAY OR DRAINAGE STRUCTURES**

As used in this Exhibit, "Contractor" or "Contractors" mean a contractor or contractors retained by the School District or Park District, as applicable, to perform work relating to the routine maintenance of the Pathway and "Construction Agreement" means the applicable construction contract between the School District or Park District and said Contractor or Contractors, for said work. The substantive provisions of this Exhibit shall be incorporated into any Construction Agreement. "Additional Insured" means the City. "Parties" means City, School District and/or Park District.

Contractor shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of any Construction Agreement. The CGL insurance shall also provide for Broad Form Property Damage, Underground Hazard, and Broad Form Property Damage.

The Additional Insured shall be included as an insured under the CGL, using ILO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if required by the Additional Insured, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written in ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Contractors shall maintain business auto liability and, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent it may be excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractors shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Additional Insured has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against the Additional Insured and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, a Contractor shall furnish the Additional Insured with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Additional Insured prior to the cancellation or material change of any insurance referred to therein. Written notice to the Additional Insured shall be by certified mail, return receipt requested.

Failure of the Additional Insured to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of an Additional Insured to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Additional Insured shall have the right, but not the obligation, of prohibiting Contractors or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Additional Insured

Failure to maintain the required insurance may result in termination the Construction Agreement.

With respect to insurance maintained after final payment in compliance with a requirement above, and additional certificate(s) evidencing such coverage shall be promptly provided to the Additional Insured whenever requested.

Contractors shall provide certified copies of all insurance policies required above within 10 days of written request by the Additional Insured for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, an Additional Insured has the right to reject insurance written by an insurer it deems unacceptable. Such insurance companies must be qualified to do business in Illinois.

3. Cross-Liability Coverage

If a Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Additional Insured. At the option of the Parties or the Railroad, a Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, their officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractors shall cause each subcontractor employed by a Contractor to purchase and maintain insurance of the type specified above. When requested by the Additional Insured, the Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

6. Occurrence and Claims Made Policies

All insurance required herein shall be on an "occurrence" basis. If, after every diligent effort to procure such insurance has been made, and such insurance cannot be obtained, Contractor may provide insurance on a "claims made" basis, but such coverage must provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance required hereunder be cancelled.

7. Insurance Required by Railroad

If Railroad requires higher amounts or different types of insurance, with respect to work done on or near Railroad property, the Contractor shall purchase such insurance, and shall name Railroad as an insured or additional insured thereunder, as Railroad may require.

F. Indemnification

To the fullest extent permitted by law, Contractors shall indemnify and hold harmless the Parties, including the Additional Insured, and their officers, officials, employees, volunteers and agents, from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party

indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. The Contractor shall similarly protect, indemnify and hold and save harmless the Parties, including the Additional Insured, and their officers, officials, employees, volunteers and agents, against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Construction Agreement.

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**GRANT OF EASEMENT FOR CONSTRUCTION OF, ACCESS TO, AND ACTIVITIES
RELATED TO THE RECONSTRUCTION, REPAIR AND MAINTENANCE OF PATHWAY
STRUCTURES**

This is a Grant of Easement for Construction of, Access to and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures, (this "Agreement"), by and among the City of Wheaton, Illinois (the "City"), the Board of Education of Community Unit School District 200 (the "School District"), and the Wheaton Park District (the "Park District"). City, School District and Park District are hereinafter sometimes individually referred to as a "Party" and collectively as the "Parties." This Agreement is dated as of _____, 200__.

RECITALS

1. School District and Park District intend to construct a pathway, south of the right-of-way of the Union Pacific Railroad (the "Railroad"), gradually ascending above ground level to a pedestrian/bicycle bridge structure over said right-of-way (the "Pathway"). School District and Park District will be engaging in activities related to the construction, reconstruction, repair and maintenance of the Pathway and structures appurtenant or incidental thereto, on the City Land, as hereinafter defined, and the transportation or storage of construction materials and tools (collectively, the "Permitted Pathway Construction Activities").

2. City is the owner of certain real property legally described and depicted on **Exhibit A** attached hereto (the "City Land"), near which the Pathway, as previously defined, will be constructed by School District and Park District. City is willing to grant to School District and Park District an easement (the "Easement") for the Permitted Pathway Construction Activities on a portion of the City Land.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Subject to the limitations herein contained, City hereby grants to the School District and Park District, their successors and assigns (the "School and Park District Grantees") the Easement on portions of the City Land, for the Permitted Pathway Construction Activities, said portions being marked as the construction easement on **Exhibit A** attached hereto. The area marked as the construction easement on **Exhibit A** hereto is hereinafter referred to as the "Construction Zone."

2. Term of Easement. The Easement shall commence on the date of execution of this Agreement by all Parties, and shall continue as long as the Pathway, together with the pedestrian/bicycle bridge structure, access ramps, paths and stairs (the "Project"), are in existence and either School District or Park District, or their successors or assigns, remains obligated to reconstruct, repair or maintain the Project, whether pursuant to contract or otherwise. The obligations of School District and Park District, as grantees hereunder, shall survive the expiration or termination of the Easement and under no circumstances shall any such obligation be deemed discharged until fully performed in accordance with provisions of this Agreement.

3. Abandonment of Easement. On notice by Park District and School District to City, School District and Park District may abandon the Easement, in which case, Park District and School District, at their sole cost and expense, shall restore the City Land to the condition of said City Land as existed prior to the commencement of the Permitted Pathway Construction Activities, and thereupon the Easement shall terminate, and the Park District and School District shall have no further

obligations with respect thereto under this Agreement, except as otherwise specifically stated in this Agreement.

4. Use of Easement. The Easement shall be used and enjoyed solely by the School and Park District Grantees, for the Permitted Pathway Construction Activities and for no other purpose.

5. Equipment; Machinery; Explosives; Debris. No equipment or machinery shall be brought or permitted to come onto the City Land, except in the Construction Zone, and subject to such reasonable restrictions as shall be specified by City, as grantor. No equipment, machinery, tools or materials shall be stored or be permitted to remain overnight on the City Land, and no explosives or flammable or hazardous substances of any kind shall be transported across, brought upon, or stored or deposited on the City Land, except, in both instances, with the express written consent of the City, with such reasonable conditions as may imposed by City. The Construction Zone at all times shall be kept free of accumulations of debris, waste and garbage.

6. City's Rights Regarding Health and Safety. City as shall have the right at any time during construction, reconstruction, repair and maintenance of the Project, to:

- a. impose weight and load restrictions which City reasonably determines are necessary or advisable under the circumstances;
- b. temporarily suspend the Easement on five (5) days written notice (except in the case of life threatening emergency, when no notice shall be required), for safety or health reasons or for the breach by any of the School and Park District Grantees of their obligations under this Agreement, pending the elimination of said emergency or commencement of cure of said breach.

7. No Effect on City's Rights. If City, as grantor, shall reserve any rights under this Agreement or fail to exercise same, said reservation or failure shall not impose or create any responsibility or liability on such City or affect, reduce or nullify in any way the obligations of the School and Park District Grantees under this Agreement.

8. Joint Use. City, as grantor shall have the right to use the City Land, including the Construction Zone, at any time for any purpose which does not unreasonably interfere with the Easement, including permitting the construction, maintenance and operation on, over or under the City Land of any public utility facility. City, as grantor, shall have the right to enter upon the Construction Zone, at any time(s), to reasonably inspect, maintain or repair the City Land including the Construction Zone and improvements thereon, to determine compliance by School and Park District Grantees, with the terms and conditions of this Agreement, as applicable, and for any other lawful purposes, provided such inspections, maintenance and repair shall not unreasonably interfere with the Permitted Pathway Construction Activities.

9. Continuing Use of Land. The School and Park District Grantees understand and acknowledge that the City Land will continue to be actively used by City personnel and the public during the construction, placement, and later reconstruction, repair and maintenance of the Project. The School and Park District Grantee shall conduct, and shall require their employees, agents and contractors to conduct, the Permitted Pathway Construction Activities at all times in a workmanlike manner.

10. Compliance With Laws. The School and Park District Grantees shall comply with all applicable federal, state and local laws, rules and regulations in the conduct of the Permitted Pathway Construction Activities.

11. Restoration: Fencing. Upon completion of any of the Permitted Pathway Construction Activities, the School and Park District grantees shall restore the Construction Zone or any other affected portions of the City Land, to the condition existing immediately prior to the commencement of any activity thereon by said grantee(s). Additionally, said grantees, at each of their sole cost and expense, shall repair all damage to the Construction Zone, any improvements located thereon and any other affected portion(s) of the City Land, and replace all lost or destroyed items. By way of example and not limitation, the existing fence on the City Land shall be removed during initial construction of the Project, and may be removed in part for subsequent maintenance and repair work on the Project, and such fence shall be relocated, at the expense of the School and Park District Grantees, as the Parties shall reasonably agree. Any damage to sidewalks, paths or parking lots on the City Land will be repaired or replaced as reasonably deemed necessary by the City. All restoration, repair and replacement shall be completed to the reasonable satisfaction of the City within thirty (30) days after the conclusion of the work, or, if due to weather or other circumstances which, in the City's opinion, would make any such restoration, repair and replacement inadvisable, then within such later time period as the City shall reasonably request.

12. Recitals Incorporated. The recitals listed at the beginning of this Agreement, above, are hereby incorporated in their entireties by reference in this Agreement.

13. Grantees' Duty of Notice and Cooperation. The School and Park District Grantees hereunder, shall give prior notice to City of the commencement, anticipated duration and termination of construction, placement, reconstruction, repair and maintenance activities, as applicable, and shall conduct said activities so as to not unreasonably interfere with City's activities on the City Land.

14. Right to Cure. In the event the School and Park District Grantees shall fail to perform and of their agreements or covenants hereunder, then City may give written notice of such deficiency to the applicable grantee, and if the applicable grantee does not cure such deficiency, or commence such cure and be diligently pursuing it to completion (if the nature of such deficiency is that it cannot be immediately cured), within forty-five (45) days after the giving of such notice, the City may either bring an action for specific performance thereof or take such action as the City deems reasonably necessary to perform said obligations, and the applicable grantee shall pay the City's costs therefor, immediately upon City's demand. The City's right to bring an action for specific performance of the applicable grantee's aforementioned obligations, or to perform said obligations and demand payment therefor, shall be the City's sole remedies for said deficiencies by the applicable grantee. In the event any Party brings any such action for specific performance or for the recovery of payments required to be made under this Paragraph 14, the non-prevailing Party in said action shall be responsible for the prevailing Party's reasonable attorneys' fees paid or incurred with respect to such action.

15. Indemnification.

15.1 Subject to the limitations contained in this Paragraph 15.1, the School District and the Park District hereby indemnify and hold harmless City, its council members, officers, agents, employees, officials, successors and assigns (the "City Indemnitees") and shall defend the City Indemnitees, from and against all liabilities, claims, demands, causes of actions, costs and expenses (including, without limitation, reasonable attorneys' fees and paralegals' fees and costs and court costs, collectively, hereinafter, the "Legal Expenses") arising out of or related to any injury to or the death of

any person or loss of or damage to property (the "Injuries") occurring in or about the City Land to the extent caused by any negligent or wrongful act or omission of any of the School and Park District Grantees. In furtherance of the foregoing indemnification obligation of School District and Park District, School District's and Park District's contractors, subcontractors or material suppliers shall separately indemnify the City Indemnitees in their contracts with School District and Park District or other third parties. School District and Park District shall each be responsible only for Injuries caused by its own respective uses. School District and Park District shall not be obligated or responsible to indemnify, hold harmless and defend the City Indemnitees, or any third parties, from or against any liability, claim, demand, cause of action, costs or expenses (including, without limitation, Legal Expenses) arising out of or related to any Injuries, to the extent same result from or arise out of the negligent or wrongful acts or omissions of any of the City Indemnitees. Nothing in this paragraph shall be interpreted to waive any statutory or common law grants of privilege or immunity.

15.2 School District and Park District hereby indemnify and hold the City Indemnitees harmless from and against any and all mechanics' and materialmen's liens, or claims therefor, including Legal Expenses for defense thereof, arising out of or in connection with the Permitted Pathway Construction Activities on the City Land.

16. Insurance. Park District and School District shall maintain commercial general liability insurance which includes coverage for liability assumed under an insured contract (including the tort liability of another assumed in a contract) covering occurrences on the City Land and shall name City, its council members, agents, employees and officials, as additional insureds under such policies. Park District and School District shall also require all of their contractors and subcontractors performing any work for Park District or School District on the City Land to maintain commercial general liability and property damage insurance, which insurance shall name City, its council members, commissioners, agents, employees and officials, as additional insureds thereon. All such policies of insurance shall be in the amount and form described in Exhibits B, C and D attached hereto, and evidence of insurance shall be provided as described in said Exhibits. Because the Easement is contemplated to be a perpetual easement, City may require School District and Park District, at any time after the initial construction of the Pathway, while Easement is in effect, to provide other or additional insurance coverage as may be reasonable under all of the facts and circumstances at the relevant time, and City may, in its sole and absolute discretion, reduce or waive any of the insurance requirements contained in Exhibits B, C and D attached hereto.

17. Notices. The Parties may give notice to each other at, and any notice required by the provisions of this Agreement shall be in writing and shall be mailed, United States mail, first class, postage prepaid, to the following addresses; or delivered in person to the following locations, with proof of such delivery to be evidenced by a receipt signed by the receiving Party; or transmitted by fax transmission, with hard copy and machine generated proof of transmission being mailed, the date of transmission, United States mail, first class, postage prepaid, to the receiving Party, at the following addresses:

If to School District:
Community Unit School District 200
130 West Park Ave.
Wheaton, IL 60187

If to Park District:
Wheaton Park District
666 S. Main St.

Wheaton, IL 60187
Attention: Executive Director

If to City:
City of Wheaton
303 West Wesley Street
Wheaton, IL 60187
Attention: City Manager

Notice sent by mail shall be deemed given the third business day after deposit in the United States mail, first class, postage prepaid. Notices delivered in person shall be deemed given the date of delivery, as evidenced by a signed receipt of the Party receiving delivery, provided such delivery is made between 9:00 AM and 5:00 PM on a regular business day, and if delivery is made after such hours, notice shall be deemed given the next regular business day. Notices transmitted by fax shall be deemed given the date of transmission if transmitted between 9:00 AM and 5:00 PM on a regular business day, or, if after said time, on the next regular business day.

18. Entire Agreement. This Agreement contains the entire contract among the Parties with respect to the use of , the City Land for the Permitted Pathway Construction Activities , and cannot be modified, except by a writing, dated subsequent to the date hereof, and signed by all Parties.

19. Binding Effect. This Agreement shall bind the successors and assigns of the Parties and shall run with the City Land.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed, by a duly authorized officer thereof, as of the date and year first above written.

City of Wheaton

By: _____
Printed Name: _____
As its: _____

Attest: _____

Board of Education of Community Unit School District 200

By: _____
Printed Name: _____
As its: _____

Attest: _____

Wheaton Park District

By: _____
Printed Name: _____
As its: _____

Attest: _____

STATE OF ILLINOIS)
) ss
COUNTY OF _____)

I, _____, a Notary Public in and for said county and state, hereby acknowledge that on this _____ day of _____, 20_____, personally appeared before me _____, as _____ of the City of Wheaton, and _____, as _____ of the City of Wheaton, known to me to be the persons who executed the foregoing Grant of Easement For Construction of, Access to, and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures, and acknowledged that they executed said instrument as their free and voluntary act and as the free and voluntary act of the City of Wheaton, for the uses and purposes therein set forth.

Notary Public

(SEAL)

My commission expires: _____

STATE OF ILLINOIS)
) ss
COUNTY OF _____)

I, _____, a Notary Public in and for said county and state, hereby acknowledge that on this _____ day of _____, 20_____, personally appeared before me _____, as _____ of Board of Education of Community Unit School District 200, and _____, as _____ of Board of Education of Community Unit School District 200, known to me to be the persons who executed the foregoing Grant of Easement for Construction of, Access to, and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures, and acknowledged that they executed said instrument as their free and voluntary act and as the free and voluntary act of Community Unit School District 200, for the uses and purposes therein set forth.

Notary Public

(SEAL)

My commission expires: _____

STATE OF ILLINOIS)

)

ss.

COUNTY OF _____)

I, _____, a Notary Public in and for said county and state, hereby acknowledge that on this _____ day of _____, 20_____, personally appeared before me _____, as _____ of the Wheaton Park District, and _____, as _____ of the Wheaton Park District, known to me to be the persons who executed the foregoing Grant of Easement for Construction of, Access to, and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures, and acknowledged that they executed said instrument as their free and voluntary act and as the free and voluntary act of the Wheaton Park District, for the uses and purposes therein set forth.

Notary Public

(SEAL)

My commission expires: _____

EXHIBIT A TO GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

LEGAL DESCRIPTION AND DEPICTION OF CITY LAND
WITH CONSTRUCTION EASEMENT MARKED

THAT PART OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SECTION 18; THENCE NORTHERLY ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 18, A DISTANCE OF 4.95 CHAINS (RECORDED) TO THE CENTERLINE OF MANCHESTER ROAD AS NOW PLATTED AND RECORDED; THENCE SOUTHWESTERLY ALONG THE CENTERLINE OF MANCHESTER ROAD AS NOW PLATTED AND RECORDED, A DISTANCE OF 6.20 CHAINS (RECORDED) TO THE EAST LINE OF THE DUPAGE COUNTY FARM FOR A PLACE OF BEGINNING; THENCE NORTH 0 DEGREES 00 MINUTES EAST ALONG THE EAST LINE OF DUPAGE COUNTY FARM, A DISTANCE OF 1000.0 FEET; THENCE NORTH 90 DEGREES 00 MINUTES WEST, A DISTANCE OF 144.0 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES EAST, A DISTANCE OF 120.0 FEET; THENCE SOUTH 21 DEGREES 48 MINUTES 05 SECONDS WEST, A DISTANCE OF 96.93 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES EAST, A DISTANCE OF 150.0 FEET; THENCE NORTH 90 DEGREES 00 MINUTES EAST, A DISTANCE OF 140.0 FEET TO A POINT 40.0 FEET WEST OF THE EAST LINE OF DUPAGE COUNTY FARM PROPERTY; THENCE SOUTH 0 DEGREES 00 MINUTES EAST ALONG A LINE 40.0 FEET WEST OF THE PARALLEL WITH SAID EAST LINE OF THE DUPAGE COUNTY FARM PROPERTY, A DISTANCE OF 650.13 FEET TO THE CENTERLINE OF MANCHESTER ROAD, AS NOW PLATTED AND RECORDED; THENCE NORTHEASTERLY ALONG THE CENTERLINE OF MANCHESTER ROAD AS NOW PLATTED AND RECORDED, A DISTANCE OF 41.26 FEET TO THE PLACE OF BEGINNING; ALL IN DUPAGE COUNTY, ILLINOIS.

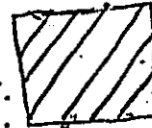
Permanent Index Number: Part of 05-18-211-003-0000

Common Address: Part of the DuPage County Government Complex, North of Manchester Road in Wheaton, Illinois 60187

NOT TO SCALE

DUPAGE COUNTY
PROPERTY

CITY OF
WHEATON
WATER
TOWER
SITE



Construction Easement

Part of Exhibit A

POINT
OF
BEGINNING

MANCHESTER ROAD

REF: DRAINAGE

551.007

DIRECTORY: 551.007P

FILE NAME: DYG/EXHIBIT C

All rights reserved

EXHIBIT B TO GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

INSURANCE TO BE MAINTAINED BY INSURED PARTIES

As used in this Exhibit, "Insured Party" or "Insured Parties" means School District or Park District, and "Additional Insured" means the City, and "Agreement" means the Grant of Easement for Construction of, Access to, and Activities Related to the Reconstruction, Repair and Maintenance of Pathway Structures

The Insured Parties shall obtain and maintain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence and a general aggregate limit of at least \$4,000,000. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operation, independent contractors, products-completed operation, personal injury, including death, property damage, and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a contract), and liability arising from the indemnity provisions contained in this Agreement. The CGL insurance shall also provide for Broad Form Contractual Liability, Underground Hazard and Broad Form Property Damage.

The Additional Insured shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured.

B. Business Auto and Umbrella Liability Insurance

Business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Workers compensation and employers liability insurance as required by statute, and the commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Additional Insured has not been included as and insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Agreement the Insured Party who was to include the Additional Insured waives all rights against the Additional Insured and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to this Agreement.

D. General Insurance Provisions

1. Evidence of Insurance

Upon execution of the Agreement, each Insured Party shall furnish the Additional Insured with (a) certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Additional Insured prior to the cancellation of material change of any insurance referred to therein. Written notice to the Additional Insured shall be by certified mail, return receipt requested.

Failure of the Additional Insured to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Additional Insured to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Insured Party's obligation to maintain such insurance.

Failure to maintain the required insurance may result in termination of the Agreement at the Additional Insured's option.

The Insured Party shall provide certified copies of all insurance policies required above within 10 days of the Additional Insured's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Additional Insured has the right to reject insurance written by an insurer it deems unacceptable. Said insurance companies must be qualified to do business in Illinois. Notwithstanding the foregoing, the insurance provided by the Insured Parties may be through a pooled risk management agency, provided same is reasonably accepted to the Additional Insured.

3. Cross-Liability Coverage

If an Insured Party's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Additional Insured. At the option of the Additional Insured, the Insured Party may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

EXHIBIT C TO GRANT OF EASEMENT FOR CONSTRUCTION, ETC.

**INSURANCE TO BE MAINTAINED BY CONTRACTORS DURING
CONSTRUCTION OR MAJOR RECONSTRUCTION OF PROJECT**

As used in this Exhibit, "Contractor" or "Contractors" mean a contractor contractors retained by School District or Park District, to perform work relating to the construction, placement or major reconstruction of the Project, and "Construction Agreement" means the applicable construction contract between the School District or Park District and said Contractor or Contractors, for said work. The substantive provisions of this Exhibit shall be incorporated into any Construction Agreement. "Additional Insured" means the City, "Parties" means City, School District and/or Park District.

Contractors shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, and a general aggregate limit of at least \$4,000,000. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of any Construction Agreement. The CGL insurance shall also provide for Broad Form Property Damage, Underground Hazard, and Broad Form Property Damage.

The Additional Insured shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractors shall maintain commercial general liability (CGL) and, if required by the Additional Insured, commercial umbrella liability insurance with a limit of not less than \$5,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Contractors shall maintain business auto liability and commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent it may be excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractors shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Additional Insured has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against the Additional Insured, its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, a Contractor shall furnish the Additional Insured with (a) certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Additional Insured prior to the cancellation of material change of any insurance referred to therein. Written notice to the Additional Insured shall be by certified mail, return receipt requested.

Failure of the Additional Insured to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Additional Insured to identify a deficiency from evidence that is provided shall not be construed as a waiver of a Contractor's obligation to maintain such insurance.

The Additional Insured shall have the right, but not the obligation, of prohibiting a Contractor or any subcontractor from entering the project site until such certificates or other evidence that

insurance has been placed in complete compliance with these requirements is received and approved by the Additional Insured.

Failure to maintain the required insurance may result in termination of the Construction Agreement.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the Additional Insured whenever requested.

Contractors shall provide certified copies of all insurance policies required above within 10 days of written request by the Additional Insured for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Additional Insured shall have the right to reject insurance written by an insurer it deems unacceptable. Such insurance companies must be qualified to do business in Illinois.

3. Cross-Liability Coverage

If a Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Additional Insured. At the option of the Parties or the Railroad, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Additional Insured, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by a Contractor to purchase and maintain insurance of the type specified above. When requested by the Additional Insured, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

6. Occurrence and Claims Made Policies

All insurance required herein shall be on an "occurrence" basis. If, after every diligent effort to procure such insurance has been made, and such insurance cannot be obtained, Contractor may provide insurance on a "claims made" basis, but such coverage must provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance required hereunder be cancelled.

7. Insurance Required by Railroad

If Railroad requires higher amounts or different types of insurance, with respect to work done on or near Railroad property, the Contractor shall purchase such insurance, and name Railroad as an insured or additional insured thereunder, as Railroad may require.

F. Indemnification

To the fullest extent permitted by law, Contractors shall indemnify and hold harmless the Parties, including the Additional Insured, their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. The Contractor shall similarly protect, indemnify and hold and save harmless the Parties, including the Additional Insured, their officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Construction Agreement.